

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

JOHN A. JACKSON,	)	Case No. EDCV 07-0360 JC
Plaintiff,	)	
v.	)	MEMORANDUM OPINION
	)	
MICHAEL J. ASTRUE,	)	
Commissioner of Social	)	
Security,	)	
Defendant.	)	

---

**I. SUMMARY**

On March 28, 2007, plaintiff John A. Jackson (“plaintiff”) filed a Complaint seeking review of the Commissioner of Social Security’s denial of plaintiff’s application for benefits. The parties have filed a consent to proceed before a United States Magistrate Judge.

This matter is before the Court on the parties’ cross motions for summary judgment, respectively (“Plaintiff’s Motion”) and (“Defendant’s Motion”). The Court has taken both motions under submission without oral argument. See Fed. R. Civ. P. 78; L.R. 7-15; April 2, 2007 Case Management Order, ¶ 5.

///

1 Based on the record as a whole and the applicable law, the decision of the  
2 Commissioner is AFFIRMED. The findings of the Administrative Law Judge  
3 (“ALJ”) are supported by substantial evidence and are free from material error.<sup>1</sup>

## 4 **II. PROCEDURAL HISTORY AND PERTINENT FACTS**

5 On August 10, 2004, plaintiff filed an application for Disability Insurance  
6 Benefits. (Administrative Record (“AR”) 42-44). Plaintiff asserted that he  
7 became disabled on August 1, 2004, due to Post Traumatic Stress Disorder  
8 (“PTSD”) caused by his military service during the conflict in Vietnam. (AR 42,  
9 45). Plaintiff also asserted that he became unable to work due to PTSD on  
10 December 31, 1987. (AR 46, 63).

11 No medical records in the Administrative Record reflect that plaintiff  
12 suffered from PTSD prior to the date he was last insured – June 30, 1989. The  
13 medical records predating June 1989, make no reference to PTSD and instead  
14 mainly focus on plaintiff’s blood pressure. (AR 133-37).

15 Medical records and an evaluation in the Administrative Record reflect that  
16 plaintiff has suffered from PTSD in recent years. (AR 123, 125, 128, 159, 163,  
17 176-77, 183). In 2005, plaintiff’s treating psychiatrist, Ahmad Tarar, M.D.,  
18 diagnosed plaintiff with PTSD and classified him as permanently disabled. (AR  
19 176-77). On June 10, 2005, Dr. Tarar completed a Work Capacity Evaluation  
20 (Mental) (“WCE”) of plaintiff. (AR 176-77). For the majority of the WCE, Dr.  
21 Tarar checked boxes indicating numerous slight, moderate and marked limitations  
22 for plaintiff. (AR 176-77). At the end of the WCE, Dr. Tarar indicated that  
23 plaintiff was “permanently” disabled due to his condition. (AR 177). Dr. Tarar  
24 also wrote that plaintiff “has chronic PTSD and developmental learning disorder  
25

---

26 <sup>1</sup>The harmless error rule applies to the review of administrative decisions regarding  
27 disability. See Batson v. Commissioner, 359 F.3d 1190, 1196 (9th Cir. 2004) (applying harmless  
28 error standard); see also Stout v. Commissioner, 454 F.3d 1050, 1054-56 (9th Cir. 2006)  
(discussing contours of application of harmless error standard in social security cases).

1 (reading). He has difficulties in many areas i.e., interpersonal and work related  
2 stressors [sic]. He is fully and permanently disabled due to his psychiatric  
3 condition. He is on psychiatric medications Trazodone and Quetiapine.” (AR  
4 177). Dr. Tamar did not opine that plaintiff suffered from PTSD prior to the date  
5 he was last insured.

6 On September 14, 2006, the ALJ heard testimony from a vocational expert  
7 and from plaintiff, who was represented by counsel. (AR 185-199).

8 On October 24, 2006, after considering the medical record and the other  
9 evidence in the Administrative Record, the ALJ determined that plaintiff was not  
10 disabled during the relevant time period. (AR 11-15). Specifically, the ALJ  
11 found: (1) plaintiff last met the insured status requirements of the Social Security  
12 Act on June 30, 1989 – the “date last insured” (AR 31); and (2) plaintiff did not  
13 have a severe impairment from December 31, 1987 through the date last insured  
14 (AR 13-14).

15 The Appeals Council denied plaintiff’s application for review. (AR 3-5).

### 16 **III. APPLICABLE LEGAL STANDARDS**

#### 17 **A. Sequential Evaluation Process**

18 To qualify for disability benefits, a claimant must show that he is unable to  
19 engage in any substantial gainful activity by reason of a medically determinable  
20 physical or mental impairment which can be expected to result in death or which  
21 has lasted or can be expected to last for a continuous period of at least twelve  
22 months. Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005) (citing 42 U.S.C. §  
23 423(d)(1)(A)). The impairment must render the claimant incapable of performing  
24 the work he previously performed and incapable of performing any other  
25 substantial gainful employment that exists in the national economy. Tackett v.  
26 Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999) (citing 42 U.S.C. § 423(d)(2)(A)).

27 In assessing whether a claimant is disabled, an ALJ is to follow a five-step  
28 sequential evaluation process:

- 1 (1) Is the claimant presently engaged in substantial gainful activity? If
- 2 so, the claimant is not disabled. If not, proceed to step two.
- 3 (2) Is the claimant's alleged impairment sufficiently severe to limit
- 4 his ability to work?<sup>2</sup> If not, the claimant is not disabled. If so,
- 5 proceed to step three.
- 6 (3) Does the claimant's impairment, or combination of
- 7 impairments, meet or equal an impairment listed in 20 C.F.R.
- 8 Part 404, Subpart P, Appendix 1? If so, the claimant is
- 9 disabled. If not, proceed to step four.
- 10 (4) Does the claimant possess the residual functional capacity to
- 11 perform his past relevant work? If so, the claimant is not
- 12 disabled. If not, proceed to step five.
- 13 (5) Does the claimant's residual functional capacity, when
- 14 considered with the claimant's age, education, and work
- 15 experience, allow him to adjust to other work that exists in
- 16 significant numbers in the national economy? If so, the
- 17 claimant is not disabled. If not, the claimant is disabled.

18 Stout v. Commissioner, 454 F.3d 1050, 1052 (9th Cir. 2006) (citing 20 C.F.R.

19 §§ 404.1520, 416.920).

---

21 <sup>2</sup>At step two of the sequential evaluation process, an impairment or a combination of

22 impairments may be found not medically severe only if evidence clearly establishes slight

23 abnormality that has no more than a minimal effect on an individual's ability to work. Webb v.

24 Barnhart, 433 F.3d 683, 687 (9th Cir. 2005). To determine whether or not an impairment is

25 severe, the ALJ must determine whether a claimant's impairment or combination of impairments

26 significantly limits his physical or mental ability to do "basic work activities." See id., see also

27 20 C.F.R. § 404.1521(a). Basic work activities are the "abilities and aptitudes necessary to do

28 most jobs," such as (1) physical functions like walking, standing, sitting, lifting, pushing, pulling,

reaching, carrying, and handling; (2) the capacity for seeing, hearing, speaking, understanding,

carrying out, and remembering simple instructions; (3) the use of judgment; and (4) the ability to

respond appropriately to supervision, co-workers, and usual work situations. 20 C.F.R.

§ 404.1521(b).

1 The ALJ has an affirmative duty to assist the claimant in developing the  
2 record at every step of the inquiry. Bustamante v. Massanari, 262 F.3d 949, 954  
3 (9th Cir. 2001); see also Webb v. Barnhart, 433 F.3d 683, 687 (9th Cir. 2005)  
4 (ALJ has special duty to fully and fairly develop record and to assure that  
5 claimant's interests are considered). The claimant has the burden of proof at steps  
6 one through four, and the Commissioner has the burden of proof at step five.  
7 Bustamante, 262 F.3d at 953-54 (citing Tackett); see also Burch, 400 F.3d at 679  
8 (claimant carries initial burden of proving disability).

9 **B. Standard of Review**

10 Pursuant to 42 U.S.C. section 405(g), a court may set aside a denial of  
11 benefits only if it is not supported by substantial evidence or if it is based on legal  
12 error. Robbins v. Social Security Administration, 466 F.3d 880, 882 (9th Cir.  
13 2006) (citing Flaten v. Secretary of Health & Human Services, 44 F.3d 1453, 1457  
14 (9th Cir. 1995)). Substantial evidence is "such relevant evidence as a reasonable  
15 mind might accept as adequate to support a conclusion." Richardson v. Perales,  
16 402 U.S. 389, 401 (1971) (citations and quotations omitted). It is more than a  
17 mere scintilla but less than a preponderance. Robbins, 466 F.3d at 882 (citing  
18 Young v. Sullivan, 911 F.2d 180, 183 (9th Cir. 1990)).

19 To determine whether substantial evidence supports a finding, a court must  
20 "consider the record as a whole, weighing both evidence that supports and  
21 evidence that detracts from the [Commissioner's] conclusion." Aukland v.  
22 Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001) (quoting Penny v. Sullivan, 2 F.3d  
23 953, 956 (9th Cir. 1993)). If the evidence can reasonably support either affirming  
24 or reversing the ALJ's conclusion, a court may not substitute its judgment for that  
25 of the ALJ. Robbins, 466 F.3d at 882 (citing Flaten, 44 F.3d at 1457).

26 ///

27 ///

28 ///

1 **IV. DISCUSSION**

2 **A. The ALJ's Disability Determination Is Supported By Substantial**  
 3 **Evidence and Is Free from Material Error**

4 The ALJ found, and neither party disputes, that plaintiff's disability insured  
 5 status expired on June 30, 1989.<sup>3</sup> (AR 11). This fact was noted in a report created  
 6 by the Administration and was acknowledged by plaintiff's counsel during the  
 7 September 14, 2006 hearing and in Plaintiff's Motion. (AR 68, 191; Plaintiff's  
 8 Motion at 3). As a result, the ALJ's determination regarding the date plaintiff was  
 9 last insured is supported by substantial evidence. Robbins, 466 F.3d at 882.

10 The ALJ determined that plaintiff did not have a severe impairment between  
 11 the alleged onset date, December 1987, and the last insured date, June 1989, and  
 12 therefore was not disabled during the relevant period and not entitled to benefits.  
 13 (AR 11, 13-14). The record supports the ALJ's conclusion that plaintiff failed to  
 14 meet his burden to demonstrate that he suffered from PTSD or another severe  
 15 impairment during this relevant time frame.

16 First, as noted above, there is no medical evidence generated prior to June  
 17 1989 which suggests that plaintiff then suffered from or was treated for PTSD.<sup>4</sup>  
 18 The ALJ's finding in this regard is supported by substantial evidence.

19 Second, the ALJ's finding that the more recent medical evidence which  
 20 suggests that plaintiff currently suffers from PTSD, i.e., the opinion of Dr. Tarar,  
 21 is insufficient to establish that he suffered from PTSD prior to the date last insured  
 22  
 23

---

24 <sup>3</sup>To be eligible for benefits a plaintiff bears the burden of proving that he/she was either  
 25 "permanently disabled or subject to a condition which became so severe as to disable [him/her]  
 26 prior to the date upon which [his/her] disability insured status expire[d]." Johnson v. Shalala, 60  
 27 F.3d 1428, 1432 (9th Cir. 1995).

28 <sup>4</sup>Plaintiff has not argued that the ALJ improperly failed fully and fairly to develop the  
 record in this case. Accordingly, the court does not consider such issue.

1 is likewise supported by substantial evidence and free from material error.<sup>5</sup> As  
2 noted above, Dr. Tarar did not offer an opinion regarding the issue at hand –  
3 whether plaintiff suffered from PTSD prior to the date last insured. In fact, Dr.  
4 Tarar made no observations regarding the onset date of plaintiff's PTSD or how  
5 far back in time plaintiff's limitations extended. (AR 177). Thus, contrary to  
6 plaintiff's contention, the ALJ did not "reject" the treating psychiatrist's opinion  
7 and thus no findings supporting such non-existent "rejection" were necessary.

8 Third, contrary to plaintiff's contention, the record reflects that the ALJ did  
9 properly consider plaintiff's alleged mental impairment. As indicated above, the  
10 issue in this case is not whether plaintiff currently suffers from a severe  
11 impairment, but whether plaintiff suffered from a severe impairment as of the date  
12 last insured. The ALJ did not contest Dr. Tarar's opinion that plaintiff currently  
13 suffers from a severe impairment. However, the ALJ found insufficient evidence  
14 to establish plaintiff had a severe impairment as of the date last insured. Dr.  
15 Tamar offered no opinion on this issue. Plaintiff points to no other medical  
16 evidence which even arguably supports his contention that he did suffer from  
17 PTSD or any other mental impairment prior to the date last insured. Substantial  
18 evidence supports the ALJ's conclusion that plaintiff failed to meet his burden to  
19 do so. As a result, the court rejects plaintiff's claim that the ALJ failed properly to  
20 consider plaintiff's mental impairments.

21 Finally, this court rejects plaintiff's contention that an alleged error by the  
22 ALJ in questioning the vocational expert warrants reversal or remand. Plaintiff  
23 contends that the ALJ failed to pose a complete hypothetical question to a  
24

---

25  
26 <sup>5</sup>Plaintiff incorrectly argues that the ALJ "completely ignored" Dr. Tarar's evaluation.  
27 (Plaintiff's Motion at 3). The ALJ referenced Dr. Tarar's evaluation (Exhibit 5F) when noting  
28 that plaintiff currently suffers from PTSD. (AR 14). In the same discussion, the ALJ pointed to  
the absence of any medical evidence showing that plaintiff suffered from such a condition, let  
alone a severe such condition, prior to the date last insured. (AR 14).

1 vocational expert during the September 14, 2006 hearing because the questions  
2 did not include the limitations found by Dr. Tarar. (Plaintiff's Motion at 5-6).

3 During the hearing, the ALJ posed hypothetical questions to the vocational  
4 expert regarding whether a hypothetical individual with certain limitations would  
5 be able to perform work that existed in the regional or national economy. (AR  
6 197-98). These questions were relevant to the step five inquiry – a step in the  
7 sequential evaluation process that the ALJ ultimately did not reach in his decision.  
8 As described above, because the ALJ found that plaintiff did not have a severe  
9 impairment prior to plaintiff's date last insured, the ALJ ended the inquiry at step  
10 two by concluding that plaintiff had no severe impairment and thus was not  
11 disabled during the period for which he was insured. The ALJ neither referenced  
12 nor relied upon the vocational expert's responses to the hypothetical questions in  
13 his decision. Thus, even assuming this court were to find the hypothetical  
14 questions improper – which it does not – any error was harmless.

15 **V. CONCLUSION**

16 For the foregoing reasons, the decision of the Commissioner of Social  
17 Security is affirmed.

18 LET JUDGMENT BE ENTERED ACCORDINGLY.

19 DATED: June 2, 2008

20 /s/

21 Honorable Jacqueline Chooljian  
22 UNITED STATES MAGISTRATE JUDGE  
23  
24  
25  
26  
27  
28